

**UNITED STATES DEPARTMENT OF COMMERCE**

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07/809, 921 12/06/91 SILVER

EXAMINER

B 1801760

ART UNIT

PAPER NUMBER

33M1/0836

WILLIAM BRINKS OLDS HOFFER GILSON &
LIONE
P.O. BOX 10395
CHICAGO, IL 60610DATE MAILED:
3309This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

08/30/93

 This application has been examined Responsive to communication filed on 11/3/93 This action is made final.A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6.

Part II SUMMARY OF ACTION1. Claims 1-4, 6 AND 8-18 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims 5 AND 7 have been cancelled.3. Claims _____ are allowed.4. Claims 1-4, 6, AND 8-18 are rejected.5. Claims _____ are objected to.6. Claims _____ are subject to restriction or election requirement.7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.8. Formal drawings are required in response to this Office action.9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.14. Other**EXAMINER'S ACTION**

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It is noted that for the first time in the prosecution of this application applicant has limited the pending claims to a bag having a writing surface inboard of the bag perimeter and an initially hermetically sealed bag having a resealable seam means which is pulled apart between the front and back sheets.

In regard to the inboard writing surface limitation, references by both Cole and Graham cited herein disclose such surfaces on flexible bags. These references alone or in combination with those references previously made of record appear to undermine the patentability of those claims directed to the inboard writing surface.

In regard to the initially hermetically sealed bag having a resealable seal means limitation, the reference to Grinrod et al cited herein discloses a bag meeting such limitations. The Grinrod et al reference alone or in combination with the prior art references to Yanase or Grimes already of record appears to cast doubt upon the patentability of those claims directed to the resealable seam means.

The after-final amendment received January 25, 1994 will not be entered because it does not clearly place the application in condition for allowance. The examiner regrets the delay in the citation of the art and the optimistic remarks expressed in the interview of January 19, 1994.

Any inquiry concerning this communication should be directed to Ralph Lewis at telephone number (703) 308-1320.

R.Lewis
February 7, 1994


Ralph Lewis
AU3309

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Claims 1-3 and 16-19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, it is unclear what constitutes a "hood body," some minimal structural definition appears necessary. Moreover, it is unclear how the hood body, collecting chamber, and collar are all related with respect toward one another. The mere listing of elements has long been considered to be indefinite. In line 13, "overly" should apparently be "overlie."

In claim 2, it is unclear how the "valve device" relates to the "hood body," "collecting chamber," and "collar" of the breast pump. The elements must be related with respect toward one another.

In claim 16, it is unclear what constitutes a "hood body." In line 17, it is unclear how the "breastpump collar" relates to the previously claimed "hood body." The elements of a claimed device must be related with respect toward one another.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1,3, and 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by Wilson.

Wilson discloses a breast pump with disposable bag. The breast pump includes hood body 1, collecting chamber 22, and collar 15. The Wilson device includes a bag 13 for containing milk and as with all plastic bags it is "hermetically sealable" with a conventional twist tie or heat seam. Additionally, contrary to applicant's assertion in response to the present rejection, the Wilson bag is sealed by a releasable closure as explicitly stated at column 3, line 63. The device further includes an adapter collar 34 which the bag overlies.

In regard to claim 4, note the writing surface on the portion of the bag overhanging the two collars in Figure 2.

Claims 4,6,8-10,12,13, and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Yanase '104.

Yanase discloses a bag having a liquid containing portion between sheets 7 and 8 having an opening formed at 36 and contrary to applicant's assertions it includes numerous portions at 3, 28, and 48 which may be written on. In regard to claim 6, note the resealable means 49. In regard to claim 8, note first seal 75 with a writing surface thereon and pour spout 83. In regard to claim 12, note first seal line 75 which serves as an area which could be written on and the second seal line which may be peeled apart at 81 to form an opening. In regard to claim 15,

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note first seal 75, second resealable seal 48, 49 (Fig. 9), pour spout 83, and notch 82.

In regard to the Yanase reference applicant additionally argues that Yanase does not disclose the use of the bag with a breast pump. It is noted that the present claims relate only to the subcombination of the bag. The Yanase bag meets all the structural limitations of applicant's claimed bag as noted above. Applicant further argues that Yanase fails to disclose a "resealable means to seal the opening." Clearly the opening is resealable as illustrated in Figure 9.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1 and 3 are rejected under 35 U.S.C. § 103 as being unpatentable over Wilson in view of Yanase '104.

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Wilson discloses little about bag 13 other than it being a flexible plastic laminate liner, there is no disclosure as to how it may be sealed after filling of expressed milk. One of ordinary skill in the art would have found it obvious to have used a Yanase '104 bag that is initially hermetically sealed and includes means for sealing for sealing once filled (Fig. 9).

Claim 2 is rejected under 35 U.S.C. § 103 as being unpatentable over Wilson and Yanase '104 as applied to claim 1 above, and further in view of Larrson.

To have provided the Wilson pump with a check valve 15 as taught by Larrson in place of valve 31 would have been an obvious substitution of equivalent parts.

Claims 11 and 14 are rejected under 35 U.S.C. § 103 as being unpatentable over Yanase '104 in view of Korn.

To have replaced Yanase closure member 30, 31, 32, 33, with a conventional tie string closure member as that taught by Korn would have been obvious to one of ordinary skill in the art as an obvious of substitution of known conventional equivalent structure.

Claims 16-18 are rejected under 35 U.S.C. § 103 as being unpatentable over Yanase '104 and Korn as applied to claims 11 and 14 above, and further in view of Wilson.

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To have merely used the modified Yanase '104 liner bag with the Wilson breast pump would have been obvious to one of ordinary skill in the art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Ralph Lewis at telephone number (703) 308-1320.

R.Lewis
August 26, 1993


Ralph Lewis
AU3309